

In the Matter of Merchant Mariner's Document No. Z-423834 and all other Seaman Documents
Issued to: CARLOS BRICENO

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1119

CARLOS BRICENO

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 25 April 1958, an Examiner of the United States Coast Guard at New York, New York, revoked Appellant's seaman documents upon finding him guilty of misconduct. The two specifications found proved allege that while serving as deck utilityman on the United States SS MACALESTER VICTORY under authority of the document above described, on or about 27 June 1957, Appellant wrongfully failed to join his ship at Venice, Italy; on or about 11 July 1957, Appellant wrongfully failed to join his ship at Leghorn, Italy.

At the hearing, Appellant acted as his own counsel. He entered pleas of guilty with an explanation to both specifications.

Appellant's explanation for missing the ship at Venice was that the sailing board was not posted and he was not told what time the ship was going to sail. (The vessel departed at 0100 on 27 June). Appellant admitted that he missed the ship but insisted that it was not his fault. The Examiner stated that Appellant's excuse was not a sufficient legal explanation and entered a plea of guilty to the first specification.

Appellant's explanation for the Leghorn incident was that he was sick and went to sleep in a hotel until after the ship had gone. The Examiner changed the plea to not guilty, stating that an explanation of illness or injury was incompatible with a wrongful failure to join.

The Investigating Officer then introduced in evidence a certified copy of entries in the ship's Official Logbook alleging Appellant's failure to join on these two occasions. Appellant replied in the negative when the Examiner asked him if he wished to take the witness stand and testify.

At the end of the hearing, the Examiner rendered the decision in which he concluded that the first specification had been proved by plea and the second specification proved. An order was entered revoking all documents issued to Appellant.

FINDINGS OF FACT

On a voyage including the dates between 27 June and 31 July 1957, Appellant was in the service of the United States SS MACALESTER VICTORY deck utilityman and acting under authority of his Merchant Mariner's Documents No. Z-423834.

On 27 June, Appellant was not on board the ship when she departed from Venice, Italy at 0100. Appellant rejoined the ship at Ancona, Italy on 2 July.

On 11 July, the ship left Leghorn, Italy at 0530 without Appellant. He rejoined the ship on the following day at Genoa, Italy.

These matters were entered in the ship's Official Logbook but there is no indication that Appellant was given an opportunity to reply to these entries or that they were made known to him.

It also appears in the Official Logbook that Appellant was paid off at Houston, Texas, on 1 August, and hospitalized.

Appellant's prior record includes three hearings within the past three years as a result of which he was found guilty of various offenses of failure to join, failure to perform duties and absence over leave.

OPINION

With respect to the first specification, Appellant stated that it was not his fault that the ship left without him (R.5). Since this, together with the rest of his explanation (see above) of his qualified plea of guilty, seems to be inconsistent with a plea of guilty, the Examiner should have entered a plea of not guilty on behalf of Appellant. See Commandant's Appeal Decisions Nos. 370 and 708.

Concerning the second specification, the logbook entry was not sufficient to make out a prima facie case because there was not substantial compliance with 46 U.S. Code 702. Although Appellant returned to the ship the next day, there has been presented no statement from the logbook that a copy of the entry was given to him or read to him. Also, the evidence from the logbook does not show that Appellant replied to the entry of his failure to join or was given an opportunity to do so. These are requirements, contained in 46 U.S.C. 702, which must be followed in substance, when the seaman is available, in order to establish a prima facie case on the basis of the contents of the Official Logbook alone.

For these reasons, the findings and conclusions pertaining to both specifications are set aside.

ORDER

The order of the Examiner dated at New York, New York on 25 April 1958, is VACATED.

The record is REMANDED for further proceedings not inconsistent with this decision.

A.C. Richmond
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 7th day of October, 1959.